IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3971 OF 2005
IN
SUIT NO.3394 OF 2005

Sabiha Sultana Khan ...Plaintiff
V/s.
Shahid Nanhemiya Shaikh ...Defendant

Mr.P.N. Gunwani, Advocate, i/b. Munir Merchant, for the Plaintiff.

CORAM : S.J. VAZIFDAR, J.

DATE : 4TH SEPTEMBER, 2007.

P.C. :

1. An ad-interim order in terms of prayer (b) of the Notice of Motion was granted on 16-12-2005.

2. No affidavit-in-reply has been filed. The learned Counsel appearing on behalf of the Plaintiff fairly points out that the Defenant has, in fact, served an affidavit-in-reply on the Plaintiff's advocate. However, the same has not been filed in Court. The Defendant was absent yesterday. He is absent today.

3. Prima-facie it appears that the Plaintiff has a half share in the suit gala. It is also fairly pointed out by the Plaintiff's Counsel that the Defendant's case is that there is a third party in

possession. It is not necessary to consider the nature of the possession at this stage in view of the affidavit not having been filed in Court.

4. In the circumstances, the Notice of Motion is made absolute in terms of prayer (a). However, Court Receiver shall not dispossess any party found to be in possession, but shall appoint such party as his agent. At this stage the Court Receiver shall not require the third party to furnish any security or to pay any royalty. However, the third party shall hand over the documents under which he claims any right in the property to the Court Receiver. The Court Receiver shall furnish the same in turn to the Plaintiff's advocate.

5. Till the Court Receiver takes possession, the ad-interim order already granted in terms of prayer (b) shall continue. Liberty to the Plaintiff to apply for further reliefs by a fresh Notice of Motion after the Court Receiver executes this order.

6. The Notice of Motion is disposed of accordingly.